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9 LEE MAX BARNETT

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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF CALIFORNIA

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15 LEE MAX BARNETT,) NO. CIV-S-99-2416 JAM CMK
16 Petitioner,)
17 v.) PETITIONER'S MOTION TO FILE NON-
18 ROBERT WONG, ACTING WARDEN,) PARTY'S MEDICAL RECORDS UNDER SEAL
19 San Quentin State Prison) and ORDER
20 Respondent.) DEATH PENALTY CASE
21 _____) Hearing Date: Thursday, August 6, 2009
) Hearing Time: 11:00 a.m.
) Location: Redding (Telephonic Appearances)

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23 Jennifer M. Corey and Robert D. Bacon, counsel for Petitioner LEE MAX BARNETT, pursuant to
24 Local Rules 39-140(a)(vi) and 39-141(a), respectfully request leave to file under seal medical records of
25 non-party Charles Andres. Contemporaneously with this motion, Mr. Barnett is filing a motion to take the
26 deposition of Mr. Andres to perpetuate his testimony because of his terminal illness. In support of his
27 motion to file under seal, Mr. Barnett states:

28 Motion to File Non-Party's Medical Records
Under Seal; Proposed Order

Congress has guaranteed the privacy of medical records. *See* Regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA), P.L. 104-191, 45 C.F.R. Parts 160 and 164 (effective April 14, 2003). The Ninth Circuit has held that “[i]ndividuals have a constitutionally protected interest in avoiding ‘disclosure of personal matters,’ including medical information.” *Tucson Women’s Clinic v. Eden*, 379 F.3d 531, 551 (9th Cir. 2004). California likewise has recognized that medical information is personal and confidential. *Hill v. Nat'l Collegiate Athletic Ass'n*, 7 Cal. 4th 1, 41 (1994). The right to privacy in one’s medical records is protected by Article I, section 1, of the California Constitution. *John B. v. Superior Court*, 38 Cal. 4th 1177, 1198 (2006). *See also* Eastern District Local Rule 39-140(a)(vi) (information required to be kept confidential pursuant to federal law must be redacted).

Mr. Barnett must submit Mr. Andres’s medical records to substantiate his claim that Mr. Andres is terminally ill, therefore Mr. Barnett should be permitted to take his deposition to perpetuate his testimony. However, there is no reason for Mr. Andres’s personal, confidential medical information to be made public simply so that Mr. Barnett can vindicate his rights to due process and a fair habeas corpus proceeding.

Petitioner provided Mr. Andres’s medical records to Respondent’s counsel on July 13, and will provide them again with this motion. Petitioner seeks to protect Mr. Andres’s records from public view, but not from Respondent’s view.

WHEREFORE, Mr. Barnett respectfully requests that this Court accept for filing under seal Mr. Andres’s medical records, submitted in support of Mr. Barnett’s motion for leave to take deposition of Charles Andres.

Dated: July 21, 2009

Respectfully submitted,

ROBERT D. BACON

DANIEL J. BRODERICK
Federal Defender

/s/ Jennifer M. Corey
JENNIFER M. COREY
Assistant Federal Defender

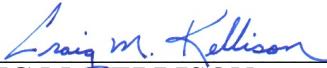
Attorneys for Petitioner
LEE MAX BARNETT

Motion to File Non-Party’s Medical Records
Under Seal; Proposed Order

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2 ORDER
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4 Good cause appearing, Petitioner's Motion to File Non-Party's Medical Records Under Seal is
5 GRANTED. Charles Andres's medical records, submitted in support of Petitioner's Motion for Leave to
6 Take Deposition of Charles Andres, shall be [lodged] under seal.
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DATED: July 27, 2009

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10 CRAIG M. KELLISON
11 UNITED STATES MAGISTRATE JUDGE
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